

F I L E D

Clerk of the Superior Court

SEP - 3 2004

By:

Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA, ex  
rel. Edwin F. Lowry, Director, California  
Department of Toxic Substances Control,

Plaintiff,

v.

IMPERIAL IRRIGATION DISTRICT, a  
public entity utility, and Does 1-10,

Defendants.

Case No. GIC825026

**FINAL JUDGMENT AND  
INJUNCTION PURSUANT  
TO STIPULATION**

Plaintiff, the People of the State of California, ex rel. Edwin F. Lowry, Director of the California Department of Toxic Substances Control ("Department") and Defendant Imperial Irrigation District ("District"), having consented to the entry of this Final Judgment and Injunction Pursuant to Stipulation ("Judgment") prior to the taking of any proof and without trial or adjudication of any fact or law herein; and

The Court having considered the pleadings, which consist of the Complaint, the parties' Stipulation for Entry of Final Judgment, and the proposed Final Judgment and Injunction Pursuant to Stipulation;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

**JURISDICTION AND VENUE**

1. Jurisdiction exists over this matter pursuant to Health and Safety Code sections 25181, 25189 and 25189.2. Venue is proper pursuant to Health and Safety Code section 25183.

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1 **APPLICABILITY**

2 2. The provisions of this Judgment shall apply to and be binding upon defendant Imperial  
3 Irrigation District and its officers, directors, agents, receivers, trustees, employees, contractors,  
4 consultants, successors, and assignees, and upon the Department and any successor agency of the  
5 Department that may have responsibility for and jurisdiction over the subject matter of this  
6 Judgment.

7 **INJUNCTION AND SCHEDULE FOR COMPLIANCE**

8 3. **Environmental Audits:** Within one (1) year of the entry of this Judgment, the District  
9 shall initiate and cause to be performed a third party hazardous waste environmental audit to be  
10 conducted at the following facilities: Headquarters, El Centro Steam Generation Facility (Steam  
11 Plant), La Quinta Power Division, Imperial Dam Facility, Pilot Knob Hydro-generating Facility,  
12 Southwest Division, North-end Division, Rockwood Generation Facility, Drop 4 Hydro-generating  
13 Facility, Holtville Division, Western Division, South Alamo 40 Storage Facility, and Coachella Gas  
14 Turbine Facility. Each audit shall include, at a minimum, an analysis of compliance with all statutory  
15 and regulatory provisions cited in the Complaint. The District shall notify the Department of any  
16 discovered violations within 21 days of the completion of the District's audit for each Facility, or  
17 more promptly as otherwise required by applicable state or federal law. Within thirty (30) days from  
18 the completion of each of the environmental audits required by this Judgment, the District shall  
19 provide the Department with an environmental audit report(s) which describes the findings, analysis,  
20 conclusions, and recommendations resulting from the environmental audits conducted by or on  
21 behalf of the District.

22 4. **Incentives for Voluntary Disclosures of Violations:** In accordance with the October  
23 2003, "Cal EPA Recommended Guidance on Incentives for Voluntary Disclosure" ("Self Disclosure  
24 Policy"), attached hereto as "Exhibit A", the District may follow the steps specified in the Self  
25 Disclosure Policy to seek protection for penalties associated with the disclosed violations. The  
26 Department reserves the right to seek penalties for violations (i) identified in the audit(s) that are not  
27 timely remedied (or that do not otherwise fall within the scope of the Self Disclosure Policy); (ii) that  
28 exist as of the audit, but which are not identified in the audit report; or (iii) that occur after the audit.

1 Notwithstanding section "D - 2" ("Voluntary Discovery") of the Self-Disclosure Policy, the  
2 environmental audit(s) required by this Judgment shall not serve to disqualify the District from  
3 applying for any benefits available through the Self Disclosure Policy.

4       5. **Assessment and Remediation of Contaminated Areas:** Within forty-five (45) days from  
5 the entry of this Judgment, the Department and District shall initiate negotiations for a Corrective  
6 Action Consent Agreement pursuant to Health and Safety Code Section 25187 in order for the  
7 District to carry out a preliminary endangerment assessment ("PEA") in accordance with the  
8 Department's Preliminary Endangerment Assessment Guidance Manual (January 1994) ("PEA  
9 Guidance Manual"), for each of the following areas: (a) the grounds within the District's  
10 Headquarters Facility as referenced in the Eleventh Cause of Action of the Complaint pertaining to  
11 the disposal of used transformer oils; (b) the grounds within District's Western Division Facility,  
12 adjacent to the District's Western Division Facility, and the areas near the public highway and  
13 irrigation canal as referenced in the Nineteenth Cause of Action of the Complaint pertaining to the  
14 disposal of spent sand blast grit; and (c) the grounds within the District's South Alamo 40 Storage  
15 Facility as referenced in the Twenty-Sixth Cause of Action of the Complaint pertaining to the  
16 disposal of used oils. The Corrective Action Consent Agreement shall include, or otherwise provide  
17 in a subsequent agreement, terms and conditions designed to address corrective action, removal  
18 action and/or remedial action of hazardous waste or hazardous waste constituents which are  
19 identified and assessed in the PEA report(s).

#### 20                                   **MONETARY SETTLEMENT REQUIREMENTS**

21       6. The defendant Imperial Irrigation District shall be liable to the Department for the  
22 total sum of eight hundred twenty thousand dollars (\$820,000.00) as follows: (a) one hundred  
23 twenty thousand dollars (\$120,000.00) of the total payment due to the Department shall be  
24 designated as administrative costs and paid to the Department within thirty (30) days from the date  
25 of entry of this Judgment; and (b) seven hundred thousand dollars (\$700,000.00) of the total payment  
26 due to the Department shall be designated as civil penalties due under the Hazardous Waste Control  
27 Law, Health and Safety Code section 25189.2. The civil penalties shall be paid as follows: (1) three  
28 hundred twenty five thousand dollars (\$325,000.00) shall be paid to the Department within one

1 hundred and eighty (180) days from the date of entry of this Judgment; and (2) the remaining three  
2 hundred seventy five thousand dollars (\$375,000.00) of the civil penalties due to the Department  
3 shall be designated as Supplemental Environmental Projects ("SEPs"), in the form as described in  
4 "Exhibit B", which is incorporated into and made a part of this Judgment, and credited towards the  
5 total penalty due to the Department in accordance with the terms and conditions of this Judgment.  
6 In complying with the monetary payment requirements set forth in this Judgment, the District's  
7 check(s) shall identify the name and case number "GIC825026" of this matter, be made payable to  
8 the "Department of Toxic Substances Control", and shall be delivered to:

9 Department of Toxic Substances Control  
10 Accounting Office  
1001 I Street  
11 P.O. Box 806  
Sacramento, California 95812-0806

12 A photocopy of each check shall be sent to:

13 Kim Wilhelm, Chief  
14 Statewide Compliance Division  
California Department of Toxic Substances Control  
1001 I Street  
15 P.O. Box 806  
16 Sacramento, CA 95812-0806

17 and

18 Juan M. Jimenez, Chief  
19 Border Unit  
Statewide Compliance Division  
20 Department of Toxic Substances Control  
9174 Sky Park Court  
San Diego, CA 92123

21 **7. Supplemental Environmental Projects:** The Department shall give the District credit  
22 for up to \$375,000.00 of the total payment due to the Department for Supplemental Environmental  
23 Projects ("SEPs") performed by the District as specified in Exhibit B. To receive credit for any of  
24 the SEPs specified in Exhibit B, the District must provide the Department with clear and complete  
25 documentation of the SEPs. The documentation shall include a certification under penalty of perjury  
26 from a responsible official of the District that the SEPs were provided as described in Exhibit B and  
27 the documentation required by the Department and that monetary funds were expended in the  
28 amount(s) set forth in that documentation. The Department will give credit on a dollar for dollar

1 basis on its final determination that the amount(s) were expended as specified in Exhibit B. In the  
2 event that the SEPs specified in Exhibit B are not performed or completed by the District in  
3 accordance with the provisions of this Judgment, or if the amount expended by the District is less  
4 than the total amount credited towards SEPs (\$375,000.00), or less than the specific dollar amount  
5 allocated for any of the SEPs specified in Exhibit B, the District shall pay to the Department an  
6 amount equal to the difference between the amount spent, if any, and the amount of credits allowed  
7 under this Judgment. Such payment shall be made to the Department within thirty (30) days of the  
8 date(s) of required completion of the SEPs specified in Exhibit B and in accordance with the  
9 payment instructions of this Judgment. The District may, prior to expiration of the time allowed to  
10 perform the SEPs, request an extension of time in writing. The extension request shall include a  
11 justification for the delay. If the Department determines that good cause exists for an extension, it  
12 will grant the request and specify in writing a new compliance schedule. The parties may agree to  
13 amend or otherwise modify Exhibit B without court approval. The SEPs specified in Exhibit B must  
14 be completed on or before December 31, 2007. If the District (i) incurs additional costs  
15 implementing some of the foregoing SEP's beyond that provided for in Exhibit B and (ii) at the same  
16 time incurs less costs implementing other such SEP's then, the District, with the Departments' prior  
17 approval (which shall not be unreasonably withheld), may shift monies from one of the foregoing  
18 SEP to another, provided that the total SEP credit does not exceed \$375,000, the total amount  
19 allocated for SEPs as set forth in Exhibit B.

20 **ADDITIONAL STIPULATED PENALTIES**

21 **FOR FAILURE TO COMPLY WITH PAYMENT SCHEDULE**

22 8. If the District fails to meet any payment deadline for administrative and monetary civil  
23 penalties (excluding monies allocated for SEPs) set forth in paragraph 6 of this Judgment, the  
24 District shall be obligated to pay the Department an additional amount of five hundred dollars  
25 (\$500.00) per day, for each day following any such payment deadline during which the District has  
26 not paid the amount owed.

27 **OTHER PROVISIONS**

28 9. **Retention of Jurisdiction.** The Court shall retain jurisdiction of this matter to implement

1 this Judgment.

2 10. **Enforcement of Judgment.** Either party may, by motion or order to show cause before  
3 the Superior Court of San Diego County, enforce the terms and conditions contained in this  
4 Judgment. Where a failure to comply with this Judgment constitutes future violations of the  
5 Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., or other laws,  
6 independent of this Judgment and/or those alleged in the Complaint, the Department is not limited  
7 to enforcement of this Judgment, but may seek in another action, subject to satisfaction of any  
8 procedural requirements, including notice requirements, whatever fines, costs, fees, penalties or  
9 remedies are provided by law for failure to comply with the Hazardous Waste Control Law or other  
10 laws. However, the rights of the District to defend itself and its actions in law or equity shall not be  
11 abrogated or reduced in any fashion by the terms of this paragraph and the District shall be entitled  
12 to raise any and all applicable defenses, rights and remedies.

13 11. **Modification.** This Judgment may be modified from time to time by express written  
14 agreement of the parties, with the approval of the Court, or by an order of this Court in accordance  
15 with law.

16 12. **Entry of Judgment.** The Clerk of the Court is ordered to enter this Judgment.

17  
18 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

19  
20 SEP - 3 2004

21 Dated: \_\_\_\_\_

WILLIAM C. PATE

\_\_\_\_\_  
Judge of the Superior Court

# EXHIBIT A

# **CAL/EPA RECOMMENDED GUIDANCE ON INCENTIVES FOR VOLUNTARY DISCLOSURE**

**October 2003**

## **Purpose**

This Guidance is designed to enhance the protection of human health and the environment by encouraging regulated entities to prevent or to discover voluntarily, disclose, and correct violations of federal, state and local environmental requirements through the use of routine, systematic application of an environmental compliance auditing program.

## **Definitions**

For purposes of this Guidance, the following definitions apply:

"Environmental Audit" is a systematic, documented, periodic, and objective review by regulated entities of facility operations and practices related to meeting environmental requirements.

"Due Diligence" encompasses the regulated entity's systematic efforts, appropriate to the size and nature of its business, to prevent, detect, disclose, and correct violations through all of the following:

1. Compliance policies, standards, and procedures that identify how employees and agents are to meet the requirements of laws, regulations, permits, and other sources of authority for environmental requirements;
2. Assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility or operation;
3. Mechanisms for systematically assuring that compliance policies, standards, and procedures are being carried out. These include monitoring and auditing systems reasonably designed to detect and correct violations, periodic evaluation of the overall performance of the compliance management system, and a means for employees or agents to report violations of environmental requirements without fear of retaliation;



4. Efforts to communicate effectively the regulated entity's standards and procedures to all employees and other agents whose duties involve environmental compliance;
5. Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards, and procedures, including consistent enforcement through appropriate disciplinary mechanisms; and
6. Procedures for the prompt and appropriate disclosure and correction of any violations, and for any necessary modifications to the regulated entity's program to prevent future violations.

"Environmental audit report" means the analysis, conclusions, and recommendations resulting from an environmental audit, but does not include data obtained in, or testimonial evidence concerning, the environmental audit.

"Gravity based penalties" are that portion of a penalty over and above the economic benefit of noncompliance, whether or not they are labeled as such, i.e., the punitive portion of the penalty, rather than that portion representing a defendant's economic gain from non-compliance. (For further discussion of this concept, see "A Framework for Statute-Specific Approaches to Penalty Assessments," #GM-22, 1980, U.S. EPA General Enforcement Policy Compendium. See also the particular penalty statutes and regulations for the individual enforcing agency bringing the action).

"Regulated entity," means any person, facility, or entity, including a federal, state, or municipal agency, regulated under federal, state, or local environmental laws.

### **C. Incentives**

This section identifies the major incentives provided to encourage self-audits, prompt disclosure and correction. These may include significantly reducing or not seeking gravity based civil penalties, declining to refer for criminal prosecution companies that self-report, and refraining from routine requests for audits.

#### **1. Waiving Gravity Based Penalties**

Where the regulated entity establishes that it satisfies all of the conditions of Section D, gravity based penalties for violations of environmental requirements may be waived if allowed by applicable statute. Gravity based penalties (defined in Section B) generally reflect the seriousness of the violator's behavior. It would be appropriate to waive a portion of such penalties for violations discovered through due diligence or environmental audits, recognizing that these voluntary efforts play a critical role in protecting human health and the environment by identifying, correcting, and ultimately preventing violations. The conditions set forth in Section D, which include prompt

disclosure and expeditious correction must be satisfied for any portion of gravity based penalties to be waived.

Any economic benefit obtained as a result of noncompliance should be recovered, even when all other conditions of the Guidance are met. Economic benefit could be waived, however, if the enforcing agency determines that it is insignificant. The recovery of economic benefit is important for two reasons. First, it provides an incentive to comply in a timely manner. Taxpayers expect to pay interest or a penalty fee if their payments are late; the same principle should apply to corporations that have delayed their investment in compliance. Second, it is fair because it protects responsible companies from being undercut by their noncomplying competitors, thereby preserving a level playing field.

## **2. Reduction of Gravity Based Penalties**

Gravity based penalties for violations of environmental requirements can be reduced to the extent the regulated entity satisfies the conditions of Section D below. The enforcing agency, may, at its sole discretion, reduce the gravity based penalties further as a credit for investment in Supplemental Environmental Projects (See Cal/EPA guidance on Supplemental Environmental Projects.).

The complete waiver of gravity based civil penalties should be available only to companies that meet the higher standard of reporting as a result of conducting an environmental auditing or systematic compliance management. However, to provide encouragement for the kind of self-policing that benefits the public, gravity based penalties can be significantly reduced for a violation that is voluntarily discovered, promptly disclosed, and expeditiously corrected, even if it was not found through an environmental audit particularly where the company agrees to implement an environmental compliance management procedure. Cal/EPA expects that this will encourage companies to come forward and work with regulatory agencies to resolve environmental problems and begin to develop an effective compliance management program.

## **3. No Criminal Recommendations**

The enforcing agency may decline to recommend to a prosecuting authority that criminal charges be brought against a regulated entity where they determine that all of the conditions in Section D are satisfied, so long as the violation does not demonstrate or involve:

- a. A management practice that concealed or condoned environmental violations; or
- b. Knowing or negligent involvement in or deliberate ignorance of the violations by corporate officials or managers.

Whether or not an enforcing agency refers the regulated entity for criminal prosecution under this section, they may reserve the right to recommend prosecution of the criminal acts of individual managers or employees.

This Guidance has important limitations. It will not apply, for example, where corporate officials are consciously and knowingly involved in, or willfully blind to, violations, or conceal or condone noncompliance. Since the regulated entity must satisfy all of the conditions of Section D, violations that caused serious harm or that may pose imminent or substantial endangerment to human health or the environment are not covered by this Guidance.

Nothing in this guidance should be construed to restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring any criminal proceeding otherwise authorized by law or to prevent an enforcing agency from cooperating with, or participating in, such a proceeding.

#### **4. No Routine Request for Audits**

It is not recommended that an enforcing agency routinely request environmental audit reports to initiate an investigation of the entity. If the enforcing agency has independent reason to believe that a violation has occurred however, it is reasonable to expect that they seek any information relevant to identifying violations or determining liability or extent of harm, including any audits that the facility may have conducted.

### **D. Conditions**

This section describes the nine conditions that a regulated entity must meet in order for an enforcing agency not to seek (or to reduce) gravity-based penalties for violations of environmental laws. As explained in the Summary above, regulated entities that meet all nine conditions may avoid gravity-based civil penalties unless otherwise mandated by statute.

#### **1. Systematic Discovery**

The violation was discovered through:

- a. an environmental audit; or
- b. an objective, documented, systematic procedure or practice reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations. The regulated entity must provide accurate and complete documentation to the enforcing agency as to how it exercises due diligence to prevent, detect, and correct violations according to the criteria for due diligence outlined in Section B. The enforcing agency may require as a condition of penalty mitigation that

a description of the regulated entity's due diligence efforts be made publicly available.

2. Voluntary Discovery

The violation was identified voluntarily, and not through a legally mandated auditing, monitoring, or sampling requirement prescribed by statute, regulation, permit, variance, judicial or administrative order, or consent agreement.

3. Prompt Disclosure

The regulated entity must have fully disclosed in writing to the appropriate federal, state or local agency, a specific violation promptly after the violation is discovered. Promptly is nominally defined as 21 working days or such shorter period as provided by law.

The 21 day period begins when the regulated entity discovers that a violation has, or may have, occurred. The trigger for discovery is when any officer, director, employee or agent of the facility has an objectively reasonable basis for believing that a violation has, or may have, occurred. Where an entity has some doubt about the existence of a violation, the recommended course is for it to disclose and allow the regulatory authorities to make a definitive determination.

The 21 working day period may not always be appropriate. Many laws and permits require immediate notification. In other instances where circumstances are complex, do not present a serious threat, and take longer to evaluate, disclosures within 21 days may not be practical. The enforcing agency may accept later disclosures as "prompt" where the regulated entity meets its burden of showing that the additional time was needed to determine compliance status and did not expose the public to unreasonable risk. Conversely, if the violation objectively represented an imminent threat to human health or the environment, reporting within 21 working days will not be deemed reasonable. Satisfaction of the prompt disclosure condition is solely within the discretion of the enforcing agency.

This condition recognizes that it is critical for enforcing agencies to receive timely and accurate reports of violations, in order to have clear notice of the violations and the opportunity to respond if necessary. Prompt disclosure is also evidence of a facility's good faith attempt to achieve or return to compliance as soon as possible.

4. Discovery and Disclosure Independent of Government or Third Party Plaintiff

Regulated entities must have taken the initiative to find violations and promptly report them, rather than reacting to knowledge of a pending enforcement action or third party complaint. Thus this condition specifies that the violation has to have been identified and disclosed by the regulated entity prior to:

- a. The commencement of a federal, state, or local agency inspection or investigation, or the issuance by such agency of an information request to the regulated entity or related industries;
- b. Notice or commencement of a citizen suit;
- c. The filing of a complaint by a third party;
- d. The reporting of the violation to a government agency by a "whistle blower" employee, rather than by one authorized to speak on behalf of the regulated entity; or
- e. The imminent discovery of the violation by a regulatory agency.

5. Correction and Remediation

The regulated entity corrected the violations immediately, certified in writing that the violations have been corrected, and took appropriate measures as determined by the appropriate agency to remedy any environmental or human harm resulting from the violation. Where appropriate, the enforcing agency will require that to satisfy conditions 5, 6, and 8, a regulated entity enter into a publicly available written agreement, administrative consent order, variance, or judicial consent decree, particularly where compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required.

This Guidance requires the violation to be corrected immediately reflecting the expectation that regulated entities will move quickly to meet their obligations under the law. While it is expected that violations must be corrected immediately, there will be those violations that require longer-term remedies, such as where significant capital expenditures are involved, or where regulatory oversight is required. The regulated entity will be expected to do its utmost to achieve compliance under the law, and the appropriate enforcing agency will retain sole discretion to determine whether the regulated entity timely corrected and remediated the violations.

6. Prevent Recurrences

The regulated entity agrees in writing to take steps to prevent a recurrence of the violation, which may include improvements to its environmental auditing or due diligence efforts.

7. No Repeat Violations

The violation (or similar violation) shall not have occurred at the same facility within the past three years. This three year time period begins to run when the government has given the violator notice of the violation, without regard to when the violation cited in the notice actually occurred. For purposes of this determination, a violation includes:

- a. Any noncompliance with a federal, state, or local environmental law or regulation identified in a conviction, plea agreement, judicial order, final administrative order, consent agreement, variance, or in a notice of violation or inspection report.
- b. Any act or omission for which the regulated entity has previously received penalty mitigation from a federal, state or local agency.

This condition bars repeat or chronic offenders from receiving penalty reduction and benefits both the public and law-abiding entities by ensuring that penalties are not waived for those entities that have previously been notified of violations and have failed to prevent repeat violations. The enforcing agency should consider all the facts and circumstances relating to any prior violation in determining whether it is a repeat violation.

This condition applies if the entity was operating under the same ownership and/or management when both violations occurred. When the facility is part of a multi-facility organization, relief under this guidance is unavailable if the same or a closely related violation occurred as part of a pattern of similar violations at one or more of these facilities within the past five years.

#### 8. Serious Violations Excluded

The violation is not one which (1) resulted in actual harm, or which may present an imminent or substantial endangerment to, human health or the environment, or (2) violates the specific terms of any judicial or administrative order, or consent agreement.

This condition makes clear that violations that result in actual harm or which may present an imminent or substantial endangerment to public health or environment are excluded from consideration under this guidance.

The Guidance also excludes penalty reductions for violating the specific terms of any judgment, order, consent agreement, or plea agreement. Once an order or agreement is in effect, there is little incentive to comply if there are no sanctions for violating its specific requirements. The exclusion in this section also applies to any failure to implement any response, removal, or remedial action covered by a written judgment, order or agreement.

#### 9. Cooperation

The regulated entity timely and fully cooperated as requested by any regulatory agency and provided the agency with the information it needs to determine applicability of this Guidance. Cooperation includes, at a minimum; timely providing all requested documents, and access to employees and the facility; and providing assistance in

investigating the violation, other related compliance problems, and any environmental consequences related to the violations. The regulated entity must not hide, tamper with, or destroy possible evidence following discovery of potential environmental violations.

This section makes clear that recalcitrant violators are excluded from consideration under this guidance. To be considered under the guidance, all entities that have been ordered or requested to come into compliance shall have done so pursuant to any time frame described by the enforcing agency. Entities that are determined to have refused lawful orders shall not benefit from their recalcitrance.

#### **E. Economic Benefit**

The enforcing agency should retain full discretion to recover any economic benefit gained as a result of noncompliance to preserve a "level playing field" in which violators do not gain a competitive advantage over regulated entities that do comply. The enforcing agency may forgive all or any portion of the penalty for violations which meet Conditions 1 through 9 in Section D, and which in its opinion do not merit the full penalty due to the insignificant amount of any economic benefit.

In determining economic benefit, the enforcing agency should also take into consideration any documented expenditures the regulated entity has made to create and implement an environmental audit or due diligence program, which can be significant. Such expenditures may counterbalance the economic benefit of the violations.

#### **F. Applicability**

At the discretion of the enforcing agency, this Guidance may be applied to settlement of claims for administrative or civil penalties for violations under statutes and regulations within the jurisdiction of enforcing agencies.

It is within the discretion of the enforcing agency to determine whether it is appropriate that a regulated entity that has received penalty mitigation for satisfying specific conditions under this Guidance receive additional penalty mitigation for satisfying the same or similar conditions under other policies for the same violation(s).

This Guidance sets forth factors for consideration that will guide the enforcing agencies in the exercise of their enforcement discretion, and is intended as guidance only. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties. This guidance is not promulgated in regulation or statute and as such is not binding on any Board, Department or local agency.

This Guidance can be used in settlement negotiations for both administrative and civil judicial enforcement actions. It is not intended for use in pleading, at hearing, or at trial. The Guidance may be applied at the enforcing agency's discretion to the settlement of

administrative and judicial enforcement actions instituted prior to, but not yet resolved, as of the effective date of this Guidance.

#### **G. Scope Of Guidance**

Cal/EPA has developed this document as a guide for settlement actions involving a broad range of environmental violations. All enforcing agencies are encouraged to adopt similar policies in order to assure statewide consistency in application.

#### **H. Making Disclosures**

Disclosures should be made to state and local agencies that have jurisdiction over their reported violations, i.e. to the local air district for air violations, to the local CUPA and/or the Department of Toxic Substance Control for hazardous waste violations. A copy may also be sent to Cal/EPA, attention legal unit. Reports to the US EPA should follow the guidelines set forth in their guidance.



# EXHIBIT B

# EXHIBIT B

## **EXHIBIT B**

### **Supplemental Environmental Projects (SEPs)**

#### **1. Hazardous Materials Vehicle and Equipment for use by the "Hazardous Incident Response Committee" (HIRC) and the District (IID) in responding to Third Party Dumping of hazardous materials and hazardous wastes on the District's right-of-ways**

Total Allocated Amount: \$115,000.00

#### SEP Description:

Subject to the approval and entry by the Court of the parties' proposed final Judgment pursuant to stipulation and the following additional terms and conditions, the District shall be entitled to a SEP credit for up to forty thousand dollars (\$40,000.00) for the purchase of one (1) new  $\frac{3}{4}$  ton, diesel, king-cab, 4x4 pickup truck with tow package and hydraulic lift gate. The District shall also be entitled to a SEP credit for up to seventy five thousand dollars (\$75,000) for the purchase of two (2) or more hazardous materials response trailers (tandem axle, 18 ft. long x 8 ft. wide) containing all hazardous spill response equipment and material including, but not limited to:

1. Personal Protection Equipment, as further specified by the HIRC;
2. Soaker pads, booms and absorbents;
3. Overpack barrels;
4. Response equipment such as shovels, brooms, ladders, etc.;
5. Cabinet with reference material;
6. Portable lights and generator;
7. Laptop computer with portable printer;
8. Storage tank (potable water & decontamination water); and
9. Port-A-Pot.

#### Additional Terms and Conditions:

- The 4x4 pickup truck shall be driven by authorized District personnel. HIRC shall have first call on the use of the truck when responding to fires, spills and accidental releases of hazardous materials.
- The District shall use the truck exclusively for response purposes including, but not limited to: fires, spills and accidental releases of hazardous materials, clean-up and removal of wastes which have been illegally deposited or abandoned on District right-of-ways or property, incidence training exercises, and HIRC or other governmental agency requests for assistance. The vehicle shall not be used for other routine operations or District needs.

## **EXHIBIT B**

### **Supplemental Environmental Projects (SEPs) (Cont.)**

- The District's use of the 4x4 pick-up truck shall be in accordance with all applicable state and federal emergency response and hazardous waste laws and regulations, including, but not limited to, laws applicable to hazardous waste transporters. The District shall not transport hazardous wastes without proper authorization from the Department (DTSC).
- The District shall maintain a mileage log journal for the 4x4 pick-up truck and shall, at a minimum, identify the driver of the truck, the date and description of the response incident for which the truck was used, and the number of miles logged for each incident. Upon reasonable notice, the original log(s) shall be made available for review and inspection by the Department. The District shall retain custody of the journal(s) for three years unless the Department approves a shorter period.
- The hazardous materials response trailers and equipment shall be donated to the HIRC. The HIRC shall determine how the trailers and equipment can best be used in preparing for, or responding to, any hazardous emergency response incident(s). The District shall have full access to the trailers and equipment as approved by the HIRC.
- The District shall mark and identify the truck and trailers with appropriate signs as requested by the HIRC so that the truck and trailers are easily identifiable as hazardous emergency response vehicles and equipment.
- Throughout the useful life of the vehicle, trailers, and equipment, and for a minimum of five (5) years from the date of purchase, the District shall be solely responsible for the costs related to the ongoing maintenance and repair of the truck, hazardous materials trailers, and equipment, including, but not limited to, conducting routine vehicle and trailer maintenance, replacing worn out equipment, and restocking supplies.

#### Completion Date:

Within sixty (60) days from the date of entry of the final Judgment, the District shall enter into the necessary contracts for the purchase of the truck, trailers, and equipment and upon receipt, promptly make said truck, trailers and materials available for use as set forth above.

## **EXHIBIT B**

### **Supplemental Environmental Projects (SEPs) (Cont.)**

#### **2. Hazardous Waste Management Training for Farming Operators, Generators and Facilities**

Total Allocated Amount: \$50,000.00

SEP Description:

Subject to the approval and entry by the Court of the parties' proposed final Judgment pursuant to stipulation and the following additional terms and conditions, the District shall be entitled to a SEP credit for up to fifty thousand dollars (\$50,000.00) for the implementation of a hazardous waste management training program for farming operators, businesses, generators and facilities in Imperial County.

Additional Terms and Conditions:

- Within one hundred and twenty (120) days from the date of entry of the final Judgment, the District shall secure a request for proposal for a qualified independent third party to conduct hazardous waste management training, at a cost up to fifty thousand dollars (\$50,000.00), as specified herein. The primary objective of the training shall be to inform and educate the farming community about the various types of hazardous wastes typically generated in farming operations, the laws and standards associated with managing those hazardous wastes, and applicable record keeping requirements.
- The training project will start in June 2004, with planning taking place through the summer. The training will begin no later than 90 days after approval of the training materials. All training sessions will conclude no later than 270 days after approval of the training materials.
- There will be a minimum of four (4) training sessions provided and each session shall be between four (4) to eight (8) hours in duration. During the winter 2004 and continuing through 2005, the District shall provide the training twice in the northern and twice in the southern portions of the Imperial Valley. The training courses must be presented by qualified hazardous waste instructors, approved by the Department. The classes will be free to attendees and shall include information on the identification of hazardous waste, the laws associated with hazardous waste management, pollution prevention strategies, and sources of additional information. A written report evaluating the effectiveness of the courses shall be provided to the Department within 120 days of the last class. The report should identify and evaluate whether any further training for the farming community is recommended.

## **EXHIBIT B**

### **Supplemental Environmental Projects (SEPs) (Cont.)**

- The request for proposal shall require the independent third party to create and develop a printed handbook, in English and Spanish languages, and an electronic version of such handbook (e.g. compact disk ("CD"), DVD and/or a Web Posting), for the hazardous waste management training. These training materials shall address hazardous waste management topics, including, but not limited to, generator requirements, disposal options and sources of information to be used by the farming community. The District shall make available sufficient copies of said handbook (hard copy and electronic format) to be distributed for each participant during each training class. A draft of the training materials identifying the proposed topics and training instructors shall be prepared and submitted to the Department for prior approval, and at least ninety (90) days prior to the initiation of the first training class. The Department shall provide the District a written response or approval within thirty (30) from receipt of the complete draft training materials.
- The District shall advertise the training sessions to encourage full participation and attendance by the farming community and businesses as appropriate and no less than two (2) weeks in advance of each training session. Various outlets for advertising the program will be utilized, including print ads, radio ads, and newsletters or other notices accompanying electrical and water bills, designed to inform the farming community of the benefits of the project and the dates of the workshops.

#### Completion Date:

The training shall be completed within 270 days after approval of the training materials. Any credits remaining that are attributable to this SEP must be made payable to the Department as set forth in the parties' final Judgment.

## EXHIBIT B

### Supplemental Environmental Projects (SEPs) (Cont.)

#### 3. Removal and Recycling of Mercury Instruments (a.k.a. Mercury Switches)

Total Allocated Amount: \$80,000.00

SEP Description:

Subject to the approval and entry by the Court of the parties' proposed final Judgment pursuant to stipulation and the following additional terms and conditions, the District shall be entitled to a SEP credit for up to eighty thousand dollars (\$80,000.00) for the removal of mercury switches, purchase costs of new switches, installation of new switches by a third party (the District shall not be entitled to credit for labor performed by District personnel), and costs associated for transportation and recycling of mercury switches from the District's Steam Plant, located in the City of El Centro, Imperial County.

Mercury Instruments:

Unit Location	Instrument Description	Size	Approx. Mercury content (lbs.)
U4 Floor level	4-1 BFP Flow	16x20x30	40
U4 Floor level	4-2 BFP Flow	16x20x30	40
U4 Floor level	Condensate Flow	16x20x30	40
U4 Floor level	Reheat Flow	16x20x30	40
U4 Floor level	Main Steam Attenuator Flow	16x20x30	40
U3 Floor level	Desuperheater Steam Flow	16x20x30	40
U3 Floor level	3-1 BFP Flow	16x20x36	50
U3 Floor level	3-2 BFP Flow	16x20x36	50
U3 Floor level	3-3 BFP Flow	16x20x36	50
U3 Floor level	Feedwater Flow	16x20x36	50
U3 Floor level	Circ Water Blowdown Flow	16x12x24	35

<b>Unit Location</b>	<b>Instrument Description</b>	<b>Size</b>	<b>Approx. Mercury content (lbs.)</b>
U3 Cooling Tower	Basin Level	12x16x36	50
U2 Pumphouse	Clearwell Level Control	24x24x30	40
U2 Pumphouse	Clearwell Level	20x10x12	5
U2 Pumphouse	Circ Water Level Control	16x12x24	35
U2 Pumphouse	Circ Water Level	20x10x12	5
U1 Pumphouse	Clearwell Level Control	16x20x48	55
U1 Pumphouse	Clearwell Level	24x16x12	5
U1 Pumphouse	Circ Water Level Control	20x16x30	40
U1 Pumphouse	Circ Water Level	20x10x12	5
U1 Pumphouse	Raw Water Flow	20x20x36	50
U3	Condensate Flow	20x24x30	40
U4	Cooling Tower Basin Level	12x16x36	50
U4	Feedwater Flow	16x20x36	50
<b>TOTAL</b>			<b>945</b>

**Additional Terms and Conditions:**

- During the non-peak electric generating period of October 2004 through March 2005, the District shall complete the work required for the removal, replacement, transportation and recycling of mercury switches (approximately 24 switches) from the District's Steam Plant, located in the City of El Centro, Imperial County.
- If the District is unsuccessful in replacing all of the above mercury switches, it shall receive credit for those that it can replace up to the total amount allocated for this SEP.



## **EXHIBIT B**

### **Supplemental Environmental Projects (SEPs) (Cont.)**

- Disposal of the mercury switches shall not occur unless the District provides supporting documentation, to the Department's satisfaction, that disposal is the only feasible alternative.

#### Completion Date:

Replacement, recycling, and/or disposal of the mercury switches must be accomplished no later than December 31, 2005. Any credits remaining that are attributable to this SEP must be made payable to the Department within thirty days (30) from the removal of the mercury switches described within this SEP or December 31, 2005, whichever is the earliest date.

#### **4. "HIRC Environmental Compliance Training Fund"**

Total Allocated Amount: \$25,000.00

#### SEP Description:

Subject to the approval and entry by the Court of the parties' proposed final Judgment pursuant to stipulation and the following additional terms and conditions, the District shall be entitled to a SEP credit for up to twenty-five thousand dollars (\$25,000.00) for the creation of a training fund used to provide Federal, State and local agency personnel training in hazardous waste management practices and emergency response.

#### Additional Terms and Conditions:

- Within thirty (30) days from the date of entry of the final Judgment, the District shall create a fund entitled the, "HIRC Environmental Compliance Training Fund" (Fund) for the express purpose of providing Federal, State and local agency personnel training in hazardous waste management practices and emergency response. The District shall deposit the sum of twenty-five thousand dollars (\$25,000.00) into the Fund and the accounting shall be administered by the District.
- The monies within the Fund will be authorized for disbursement through the HIRC and disbursed by check by the District to the recipients as designated by the HIRC. The HIRC will authorize the disbursement of monies by the District from the Fund by a majority vote of the members. The District will make available District facilities to support the training to be provided.

## **EXHIBIT B**

### **Supplemental Environmental Projects (SEPs) (Cont.)**

#### Completion Date:

The District shall make the \$25,000.00 contribution to the Fund within thirty (30) days from the approval and entry by the Court of the parties' final Judgment.

#### **5. Equipment for the HIRC**

Total Allocated Amount: \$105,000.00

#### SEP Description:

Subject to the approval and entry by the Court of the parties' proposed final Judgment pursuant to stipulation and the following additional terms and conditions, the District shall be entitled to a SEP credit for up to sixty-five thousand dollars (\$65,000.00) for the purchase of one portable air compressor used to put compressed air into the Self-Contained Breathing Apparatus (SCBA) cylinders used by Imperial County's HIRC members. The District shall also be entitled to a SEP credit for up to forty thousand dollars (\$40,000) for the purchase of one portable (trailer) decontamination station with equipment for the Imperial County's HIRC members.

#### Additional Terms and Conditions:

- Said portable compressor and portable decontamination station with equipment shall be donated to the HIRC whose members shall have exclusive use of that equipment and supplies. The HIRC shall, in its sole discretion, determine how the portable compressor and portable decontamination station can best be used in preparing for, or responding to, any emergency response incident.
- The District shall also purchase and donate equipment for the a portable decontamination station that includes at a minimum, a portable generator, water tank, shower equipment and all other needed decontamination equipment and supplies as determined by the Chief, Imperial County Fire Department or, if necessary, the HIRC.

#### Completion Date:

Within sixty (60) days from the date of entry of the parties' final Judgment, the District shall enter into a contract for the purchase of a portable air compressor and portable decontamination station with equipment. Upon receipt the District shall deliver to the HIRC the portable air compressor and portable decontamination station with equipment. Any credits remaining that are attributable to this SEP must be made payable to the Department as set forth in the parties' final Judgment.

## **EXHIBIT B**

### **Supplemental Environmental Projects (SEPs) (Cont.)**

#### **6. Movement of Funds Between SEPs.**

If the District (i) incurs additional costs implementing some of the foregoing SEP's beyond that provided for in this Exhibit and (ii) at the same time incurs less costs implementing other such SEP's then, the District, with the Departments prior approval (which shall not be unreasonably withheld), may shift monies from one of the foregoing SEP to another, provided that the total SEP credit does not exceed \$375,000.

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No.: **GIC 825026**

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

**Jerry W. Ross, Esq.**  
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**Houston, TX 77010**

**James A. Garrett, Esq.**  
**Pillsbury Winthrop LLP**  
**101 W. Broadway, Suite 1800**  
**San Diego, CA 92101**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on a August 30, 2004, at San Diego, California.

Declarant

Signature